

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

DENNY DENSMORE,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:15-CV-0096-JL
v.	)	
	)	
NATIONAL BOARD OF MEDICAL	)	
EXAMINERS,	)	
	)	
Defendant.	)	
	)	

**NATIONAL BOARD OF MEDICAL EXAMINERS’**  
**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

The Defendant, National Board of Medical Examiners (“NBME”), hereby moves to dismiss the Complaint filed by the Plaintiff, Denny Densmore (“Densmore” or the “Plaintiff”), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of its Motion, Defendant states as follows:

1. The Complaint, which alleges that NBME violated the Americans with Disabilities Act (“ADA”) when it denied Densmore’s request for an accommodation in taking a medical licensing examination, fails to state a claim upon which relief can be granted because it alleges and relies upon an incorrect standard for establishing a “disability” under the ADA. Specifically, Densmore alleges that he has learning disabilities that substantially limit his ability to read and learn as compared to *most people of similar education and training*, citing the Appendix to the regulations implementing the Act as the source of that standard. But that standard appears nowhere within that Appendix, the ADA or its accompanying regulations.

2. To state a cause of action under the ADA, Densmore must allege an impairment that substantially limits a major life activity “as compared to *most people in the general population.*” 29 C.F.R. § 1630.2(j) (emphasis added). Plaintiff’s Complaint fails to allege any facts that support that he is “disabled” under the correct standard, and therefore Plaintiff’s entitlement to relief is not plausible.

3. For the reasons set forth herein and in the supporting Memorandum, Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

4. Due to the nature of this motion, Defendant did not attempt to obtain consent from the Plaintiff for the relief sought herein.

WHEREFORE, Defendant, National Board of Medical Examiners, requests that this Court enter an Order:

- A. Dismissing Plaintiff’s Complaint in its entirety; and
- B. Granting any such other and further relief as is just and equitable.

Respectfully submitted,

NATIONAL BOARD OF MEDICAL  
EXAMINERS

Date: May 1, 2015

By its attorneys,

MCLANE, GRAF, RAULERSON AND  
MIDDLETON, PROFESSIONAL  
ASSOCIATION

By: /s/ Wilbur A. Glahn, III  
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**Certificate of Service**

I certify that, on May 1, 2015, I served the foregoing via ECF electronic transmission in accordance with the Court's Administrative Procedures for ECF to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Wilbur A. Glahn, III  
Wilbur A. Glahn, III, Bar No. 937